IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17374 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH @ RAJU MUNSIRAM SONI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17374 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS Mita S Panchal AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 12/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order of detention dated 08/02/03, passed by respondent no.2, for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "the Act") on the ground that the petitioner was involved in three criminal offences punishable u/s.307, 324, 323, 147, 148 and 149 and s.135 of the Bombay Police Act registered with Bhavnagar Division Police Station at C.R.No.305/2001 and other offences.

2. The petitioner has contended that the petitioner could not be treated to be a "bootlegger" and his alleged activities could not be treated to be a threat to the public order. Therefore, he could not have been detained by the second respondent and that the representation made by the petitioner on 02/12/03, has not been promptly attended to and therefore, the further detention of the petitioner stands vitiated. The petitioner has, therefore, prayed that the present petition be allowed, the order of detention impugned in this petition be set aside and the petitioner be set at liberty forthwith.

3. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.M S Panchal learned AGP appears on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

4. On going through the records, it is very clear that the detention order has been passed by the second respondent on 08/02/03. It is placed at Annexure 'A' page 15. Page 18 shows that three offences have been registered against the petitioner. The petitioner was arrested in the aforesaid three offences on 18/09/01, 24/12/02 and 26/12/02 respectively. There cannot be any serious dispute about the same.

5. Page 19 shows that over and above the aforesaid registered offences, four unnamed witnesses have rendered their statements to the Police Officer, which were verified by the detaining authority, before passing the above order. This fact can be gathered from the records and therefore, the same cannot be disputed.

6. At this stage, the learned advocate for the petitioner has contended that the petitioner had made a representation on 02/12/03 to the second respondent which came to be disposed of by the State Government on

15/12/03. The learned advocate for the petitioner has also submitted a communication received from the Government which is taken on record. The affidavit of the second respondent produced by the learned AGP is also taken on record.

7. On going through the above records, it becomes clear that the above representation was made by the petitioner on 02/12/03 and the State Government had disposed of the said representation on 15/12/03, meaning thereby, that there was a gap of thirteen days. At this stage, the learned AGP has made it clear that the representation was received by the second respondent on 05/12/03 and since the order of detention was approved by the State Government, there was no question for the consideration of the above representation by the detaining authority and therefore, it was forwarded to the State Government on 06/12/03. It was received there on 10/12/03 and thereafter, it was placed before the appropriate authority and it was promptly disposed of. She has also contended that there were non-working Saturday and Sunday in between the above period.

8. Considering the above explanation, it cannot be said that there was inordinate and unexplained delay in disposing of the representation of the petitioner.

9. The learned advocate for the petitioner has then contended that the offences registered against the petitioner and the statements of unnamed witnesses on record, go to show that there were stray individual cases between the petitioner and those persons involved in the aforesaid offences.

10. Now, it is very clear that stray individual offences may amount to a threat to law and order situation. However, it may not amount to threat to public order. There is always a distinct demarcating line between law and order and public order. In the present case, we find that the situation can be termed as a threat to law and order situation. It, however, cannot be termed to be a threat to public order.

11. Looking to the provisions made in the aforesaid Act, it is absolutely clear that a detention order can be passed only if the activities of the detenu set a threat to the public order. A threat to law and order situation would not give power or jurisdiction to the detaining authority for issuance of the order of detention. In the present case, we find that whatever allegations made in the impugned order, whatever facts stated in the police

cases referred to above and whatever stated in the statements of unnamed witnesses, all go to suggest that the situation arising therefrom, would be a threat to the law and order situation. However, the said facts do not lead to any threat to public order and therefore, in absence of any threat to public order, the detention order could not have been passed by the detaining authority against the petitioner.

12. In above view of the matter, the order impugned in this petition suffers from the aforesaid infirmity and therefore, it is not possible to sustain the same in the eyes of law.

12. For the foregoing reasons, this petition is allowed. The order of detention dated 08/02/03 passed by respondent no.2 against the petitioner is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute. No costs. Direct service permitted.

(D. P. Buch, J.)

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